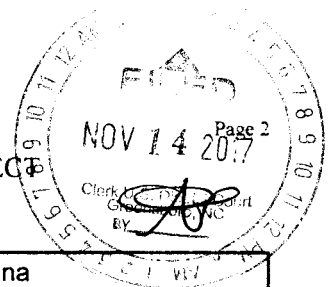


MOTION UNDER 28 U.S.C. § 2255 TO VACATE, SET ASIDE, OR CORRECT
SENTENCE BY A PERSON IN FEDERAL CUSTODY



United States District Court		District Middle District of North Carolina
Name <i>(under which you were convicted)</i> : Brian David Hill		Docket or Case No.: 1:13-cr-435-1
Place of Confinement: Supervised Release under the U.S. Probation Office	Prisoner No.: 29947-057 (USM number)	
UNITED STATES OF AMERICA Movant <i>(include name under which convicted)</i>		
V. Brian David Hill		

MOTION

1. (a) Name and location of court which entered the judgment of conviction you are challenging:

United States District Court
for Middle District of North Carolina
324 West Market Street, Suite 1, Greensboro, NC 27401

(b) Criminal docket or case number (if you know): 1:13-cr-435-1

2. (a) Date of the judgment of conviction (if you know): 11/12/2014

(b) Date of sentencing: 11/10/2014

3. Length of sentence: 10 months and 20 days, but not less than time served

4. Nature of crime (all counts):

Count 1: 18:2252A(a)(5)(B) and (b)(2) - Possession of Child Pornography

5. (a) What was your plea? (Check one)

(1) Not guilty ☐

(2) Guilty ☒

(3) Nolo contendere (no contest) ☐

(b) If you entered a guilty plea to one count or indictment, and a not guilty plea to another count or what did you plead guilty to and what did you plead not guilty to?

I plead guilty to possession of child pornography because from what I understood, the U.S. Attorney claimed that it was on my computer, regardless of whom put it there, so therefore I thought I was technically guilty of possession of child porn. However at a later time I realized that I was wrong to assume that, that I am entitled to prove the affirmative defense of Frame Up which is recognized by the U.S. Supreme Court. I falsely plead guilty because of ineffective Counsel and deteriorating health. See Brief/Memorandum in attachment to this Motion for more information.

6. If you went to trial, what kind of trial did you have? (Check one)

Jury ☐

Judge only ☐

7. Did you testify at a pretrial hearing, trial, or post-trial hearing?

Yes ☒

No ☐

8. Did you appeal from the judgment of conviction?

Yes ☒

No ☐

Defendant's Answer to 8.: Almost had a Jury trial

Defendant's Answer to 7.: Not testified on the stand

9. If you did appeal, answer the following:

- (a) Name of court: U.S. Court of Appeals for the Fourth Circuit
- (b) Docket or case number (if you know): 15-4057
- (c) Result: The judgment of the district court is affirmed in part. The appeal is dismissed in part. Doc #19-1
- (d) Date of result (if you know): 4/7/2015
- (e) Citation to the case (if you know): _____
- (f) Grounds raised:
N/A - Untimely filed

(g) Did you file a petition for certiorari in the United States Supreme Court? Yes ☐ No ☒

If "Yes," answer the following:

- (1) Docket or case number (if you know): _____
- (2) Result: _____
- (3) Date of result (if you know): _____
- (4) Citation to the case (if you know): _____
- (5) Grounds raised: _____

10. Other than the direct appeals listed above, have you previously filed any other motions, petitions, or applications, concerning this judgment of conviction in any court?

Yes ☒ No ☐

11. If your answer to Question 10 was "Yes," give the following information:

- (a) (1) Name of court: U.S. District Court for the Middle District of North Carolina
- (2) Docket or case number (if you know): 1:13-cr-435-1
- (3) Date of filing (if you know): _____
- (4) Nature of the proceeding: Misc. pro se Motions
- (5) Grounds raised: Various issues in the Misc. pro se Motions

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐

No ☒

(7) Result: Judge Osteen denied every single pro se motion since conviction

(8) Date of result (if you know): _____

(b) If you filed any second motion, petition, or application, give the same information:

(1) Name of court: _____

(2) Docket of case number (if you know): _____

(3) Date of filing (if you know): _____

(4) Nature of the proceeding: _____

(5) Grounds raised: _____

(6) Did you receive a hearing where evidence was given on your motion, petition, or application?

Yes ☐

No ☐

(7) Result: _____

(8) Date of result (if you know): _____

(c) Did you appeal to a federal appellate court having jurisdiction over the action taken on your motion, petition, or application?

(1) First petition:

Yes ☐

No ☐

(2) Second petition:

Yes ☐

No ☐

(d) If you did not appeal from the action on any motion, petition, or application, explain briefly why you did not: _____

12. For this motion, state every ground on which you claim that you are being held in violation of the Constitution, laws, or treaties of the United States. Attach additional pages if you have more than four grounds. State the facts supporting each ground.

GROUND ONE: Actual Innocence

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Defendant Brian David Hill ("Defendant"), is asserting the claim of actual innocence based on particular elements of what was discovered after conviction.

The Defendant didn't get to review over the rest of all of the discovery material for the criminal case until January 22, 2015 at the office of John Scott Coalter (court appointed lawyer).

(Confession element)The Defendant confirmed after conviction that he made false confession statements which could have been proven by cross referencing/examining the U.S. Attorney's discovery material. Defendant made a confirmed false confession statement regarding child pornography in his Netbook, regarding the child pornography download date for "about a year or so", and his statement of describing PTHC which stands for "Preteen Hardcore" (excerpt cited from Mayodan Police Report) was fabricated over what was already described in Police detective Robert Bridge's search warrant affidavit and in the Police Report, so Defendant describing what PTHC stood for was already described in Detective Bridge's Affidavit. Defendant exhibited a sophisticated form of echolalia which means he repeated what was already described to him by Police. See Brief/Memorandum in attachment to this Motion for more information.

(Forensic element)The Defendant asserts that the entire "SBI Case File" forensic report is questionable on it's own merits. Making a claim that child pornography downloaded using the eMule program between the dates "July 20, 2012, and July 28, 2013." That same Laptop had been seized on August 28, 2012. The child porn download dates corroborate the claims in various threatening emails from tormail.org. More are stated in the Brief attached.

(b) **Direct Appeal of Ground One:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Untimely filed Appeal. The U.S. Court of Appeals would not let me raise any of these issues due to filing too late. Actual Innocence claim doesn't require prior direct appeal, especially on newly discovered evidence.

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☒

No ☐

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: Various pro se filings on actual innocence. Document #71, Document #73, etc

Name and location of the court where the motion or petition was filed:

U.S. District Court for the Middle District of North Carolina

Docket or case number (if you know): 1:13-cr-435-1

Date of the court's decision: 4/29/2015

Result (attach a copy of the court's opinion or order, if available):

Document #87

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐

No ☒

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐

No ☒

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐

No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

Because there was no statute or federal rule that was used to back any of the post-conviction pro se motions, that was why they were all denied. There was no use appealing motions that hold no legal basis. That is why this 2255 motion is being filed, because it is backed by both case law and statute. I have a legal basis for this motion, good evidence, and good grounds. See Brief/Memorandum in attachment to this Motion for more information.

GROUND TWO: Ineffective Assistance of Counsel

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

See Brief/Memorandum in attachment to this Motion for more information.

Eric David Placke did many things that were ineffective and would be difficult to explain in this little box.

See "BRIEF / MEMORANDUM IN SUPPORT OF BRIAN DAVID HILL'S "MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY""

"DECLARATION, ATTACHED EXHIBITS, AND BRIEF IN SUPPORT OF THIS MOTION"

for all of the evidence and Affidavits? Declarations in support of Defendant's ineffective assistance of Counsel claim needed to prove actual innocence, as the change of plea from guilty to not guilty will require me to prove ineffective Counsel prior to my false guilty plea, and a good reason why I had falsely plead guilty instead of taking it to trial.

Evidence I have is that my health was deteriorating while in Jail, my Counsel was going to provide no evidence for the Jury Trial, my Autism would not be brought up, Placke had no defense planned nor prepared. I would have faced prison time if I had not falsely taken the guilty plea. Now that I am out of jail, I can fight to prove my innocence without Placke.

(b) Direct Appeal of Ground Two:

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐

No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Untimely filed Appeal. The U.S. Court of Appeals would not let me raise any of these issues due to filing too late.

(c) Post-Conviction Proceedings:

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐

No ☒

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue: _____

GROUND THREE: Deprivation of due process rights as guaranteed by Fourteenth Amendment. Deprivation of discovery rights

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

Was not given full access to criminal case discovery materials until January 22, 2015, at John Scott Coalter's office, a few months after I was convicted upon final Judgment. That was why I was furious and filed a bunch of pro se motions with evidence, even though none of those had any statutory basis. I was angry that I was swindled by my own lawyers. They wouldn't let me prove my innocence in any way. All Placke wanted me to do was to say falsely under Oath that I was guilty, and Coalter to stick with my false guilty plea.

See Brief/Memorandum in attachment to this Motion for more information.

See "BRIEF / MEMORANDUM IN SUPPORT OF BRIAN DAVID HILL'S "MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY""
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(b) Direct Appeal of Ground Three:

- (1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

- (2) If you did not raise this issue in your direct appeal, explain why:

Untimely filed Appeal. The U.S. Court of Appeals would not let me raise any of these issues due to filing too late.

(c) Post-Conviction Proceedings:

- (1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☒

- (2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

-
- (3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☒

- (4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☒

- (5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

- (6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

GROUND FOUR: Prosecutorial misconduct - Based upon new evidence that has surfaced in a 2017 Freedom of Information Act ("FOIA") lawsuit and FOIA Appeal case, in the Western Dist. of Virginia.

(a) Supporting facts (Do not argue or cite law. Just state the specific facts that support your claim.):

The U.S. Attorney has covered up two pieces of evidence that is needed to help prove factual innocence for this 2255 motion. Because of this I ask that the Court enforce the discovery of the criminal case evidence that was originally received by Eric David Placke but he refused to let me prove my innocence in any way with the discovery evidence material. John Scott Coalter has threatened that he may destroy the evidence of discovery which further forces me to be stuck with my false guilty plea. Eric David Placke only wanted to work with the U.S. Attorney and get the best guilty plea bargain he could. He was not interested in suppressing any evidence, and not interested in my innocence. Because of not getting access to all of my discovery material, I had to sue the Executive Office for United States Attorneys and U.S. Department of Justice citing the deprivation of my rights under Brady v. Maryland and Giglio v. United States.

See "BRIEF / MEMORANDUM IN SUPPORT OF BRIAN DAVID HILL'S "MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY""
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(b) **Direct Appeal of Ground Four:**

(1) If you appealed from the judgment of conviction, did you raise this issue?

Yes ☐ No ☒

(2) If you did not raise this issue in your direct appeal, explain why:

Newly discovered evidence filed in Federal civil case "Brian David Hill v. Executive Office for United States Attorneys (EOUSA) et al," case no. 4:17-cv-00027, U.S. Dist. Court for Western District of Virginia.

(c) **Post-Conviction Proceedings:**

(1) Did you raise this issue in any post-conviction motion, petition, or application?

Yes ☐ No ☐

(2) If you answer to Question (c)(1) is "Yes," state:

Type of motion or petition: _____

Name and location of the court where the motion or petition was filed: _____

Docket or case number (if you know): _____

Date of the court's decision: _____

Result (attach a copy of the court's opinion or order, if available): _____

(3) Did you receive a hearing on your motion, petition, or application?

Yes ☐ No ☐

(4) Did you appeal from the denial of your motion, petition, or application?

Yes ☐ No ☐

(5) If your answer to Question (c)(4) is "Yes," did you raise the issue in the appeal?

Yes ☐ No ☐

(6) If your answer to Question (c)(4) is "Yes," state:

Name and location of the court where the appeal was filed:

Docket or case number (if you know):

Date of the court's decision:

Result (attach a copy of the court's opinion or order, if available):

(7) If your answer to Question (c)(4) or Question (c)(5) is "No," explain why you did not appeal or raise this issue:

13. Is there any ground in this motion that you have not previously presented in some federal court? If so, which ground or grounds have not been presented, and state your reasons for not presenting them:

U.S. Attorney refusing to give me access to my entire criminal case discovery material even though requested via Freedom of Information Act.

Federal civil case "Brian David Hill v. Executive Office for United States Attorneys (EOUSA) et al," case no. 4:17-cv-00027, U.S. Dist. Court for Western District of Virginia.

14. Do you have any motion, petition, or appeal now pending (filed and not decided yet) in any court for the you are challenging? Yes ☐ No ☐

If "Yes," state the name and location of the court, the docket or case number, the type of proceeding, and the issues raised.

15. Give the name and address, if known, of each attorney who represented you in the following stages of the you are challenging:

(a) At the preliminary hearing:
Eric David Placke

(b) At the arraignment and plea:
Eric David Placke

(c) At the trial:
Eric David Placke (no trial had to proceed because of the change of plea to guilty)

(d) At sentencing:
John Scott Coalter

(e) On appeal:
Mark Jones

(f) In any post-conviction proceeding:
No proceeding yet

(g) On appeal from any ruling against you in a post-conviction proceeding:

16. Were you sentenced on more than one court of an indictment, or on more than one indictment, in the same court and at the same time? Yes ☐ No ☒

17. Do you have any future sentence to serve after you complete the sentence for the judgment that you are challenging? Yes ☐ No ☒

(a) If so, give name and location of court that imposed the other sentence you will serve in the future:

(b) Give the date the other sentence was imposed:

(c) Give the length of the other sentence:

(d) Have you filed, or do you plan to file, any motion, petition, or application that challenges the judgment or sentence to be served in the future? Yes ☐ No ☐

18. **TIMELINESS OF MOTION:** If your judgment of conviction became final over one year ago, you must explain why the one-year statute of limitations as contained in 28 U.S.C. § 2255 does not bar your motion.*

Because actual innocence and my Constitutional rights should not be barred by statute. Even John Scott Coalter ("Mr. Coalter") admitted on September 30, 2016, that if I decide to file a 2255 and assert actual innocence, that I would have to appear before a "change of plea" hearing and I would have to raise ineffective assistance of Counsel as a reason why I had (falsely) taken the plea of guilty. Since ineffective Counsel can arguably be raised, then why not all Constitutional grounds since I have been deprived of all Constitutional rights that an Article III Court is supposed to guarantee all criminal Defendants accused of serious crimes.

Also new evidence has been discovered since then. I had filed a Freedom of Information Act ("FOIA") request with the Executive Office for U.S. Attorneys ("EOUSA") concerning my criminal case discovery evidence since Mr. Coalter refused to give me my discovery, has threatened to possibly destroy the evidence, and Mr. Coalter has admitted to being in conflict of interest of me wanting to prove my actual innocence so he is working against me.

In a June 29, 2017, letter mailed to me from the Office of Government Information Services ("OGIS"), the Mediation staffer admitted to receiving a claim from the EOUSA that the U.S. Attorney office of Greensboro, NC do not have the confession audio and SBI case file, even though they were made aware on June 30, 2015 during the Supervised Release Revocation ("SRV") hearing that I fully intend on overturning my criminal conviction and prove my actual innocence via a 2255 Motion. The U.S. Attorney has removed evidence from their office to evade my FOIA request and prevent me from getting access to my criminal case discovery evidence to be able to mount a factual claim of actual innocence. The original evidence that they had used against me to led me to being wrongfully convicted, they have removed a portion of the evidence records that was used to indict and convict me. Because of that I had filed a lawsuit in the U.S. District Court, for the Western District of Virginia, case # 4:17-cv-27. The case is currently being reviewed and heard in the Danville Division in Danville, VA. The evidence presented in my Complaint that has been presented had enough of a merit to cause the U.S. Attorney office of Greensboro, NC (Middle District of North Carolina) to file answers to my complaint. They filed answers denying all allegations, even denying knowledge of my health condition (aka Autism and Type 1 Brittle Diabetes) which in my criminal case that had fully had knowledge of my health condition in both Transcripts and the U.S. Attorney admitted to receiving and reviewing the psychological report by Dr. Dawn Graney at the June 3, 2014, Pretrial Status Conferenece. The U.S. Attorney has made denial of knowledge to things that they are very well knowledgable on. The U.S. Attorney of Greensboro, NC, to my knowledge has perpetuated a fraud among the Court with answers that I and witnesses (Kenneth Forinash, Stella Forinash, Roberta Hill) know for a fact of matter are not the truth. The U.S. Attorney office of Greensboro, NC, collectively in the FOIA lawsuit in 2017, have lied about the evidence that they had originally used to indict and eventually convict me by plea agreement. I feel that the U.S. Attorney knew of any facts of possible factual innocence but they have either ignored it, lied about it, or got rid of any evidence records, papers, or things that can help to prove any facts of my actual innocence.

If the U.S. Attorney perpetuated a fraud among the Court, then I have a right to investigate if that is indeed the case, and as to why. The Court has a right to investigate if that is indeed the case, and as to why. If there is clear and convincing evidence that the U.S. Government may have perpetuated a fraudulent criminal case against a innocent man, then the Court needs to investigate with a full eventiary hearing and ask both sides what evidence they have. Under Marbery v. Madison, any law that is repugnant to the Constitution is null and void. My Constitutional rights should not be further deprived by the one year limitation. Actual Innocence is also a factor in Constitutional rights being deprived. Even though I am not in a federal prison, I am still remanded to the custody of the U.S. Marshal, to serve my sentence under Supervised Release and sex offender restrictions. I am not free to come and go as I please.

See Brief/Memorandum in attachment to this Motion for more information. See "BRIEF / MEMORANDUM IN SUPPORT OF BRIAN DAVID HILL'S "MOTION UNDER 28 USC § 2255 TO VACATE, SET ASIDE, OR CORRECT SENTENCE BY A PERSON IN FEDERAL CUSTODY""

"DECLARATION, ATTACHED EXHIBITS, AND BRIEF IN SUPPORT OF THIS MOTION"

* The Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA") as contained in 28 U.S.C. § 2255, paragraph 6, provides in part that:

A one-year period of limitation shall apply to a motion under this section. The limitation period shall run from the latest of –

- (1) the date on which the judgment of conviction became final;
- (2) the date on which the impediment to making a motion created by governmental action in violation of the Constitution or laws of the United States is removed, if the movant was prevented from making such a motion by such governmental action;
- (3) the date on which the right asserted was initially recognized by the Supreme Court, if that right has been newly recognized by the Supreme Court and made retroactively applicable to cases on collateral review; or
- (4) the date on which the facts supporting the claim or claims presented could have been discovered through the exercise of due diligence.

Therefore, movant asks that the Court grant the following relief:

Vacate and overturn the criminal conviction and Judgment on November 12, 2014. Vacate the entire sentence. Grant the Defendant a "certificate of innocence" allowing the Defendant the right to expunge records. State facts of innocence. or any other relief to which movant may be entitled.

Brian D. Hill (Pro Se)
Signed
Signature of Attorney (if any)

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I declare (or certify, verify, or state) under penalty of perjury that the foregoing is true and correct and that this Motion under 28 U.S.C. § 2255 was placed in the prison mailing system on November 11~~th~~, 2017
(month, date, year)

U.S. Postal Service
OR FedEx

Executed (signed) on November 11~~th~~, 2017 (date)
11

Brian D. Hill
Signed
Signature of Movant

If the person signing is not movant, state relationship to movant and explain why movant is not signing this motion.

Certified Mail tracking #: 7017-1450-0000-9407-6759

Brian D. Hill (Pro Se)

310 Forest St. Apartment 2

Martinsville, VA 24112

2nd certified mail tracking #: 7017-1450-0000-9407-6766